

**RECEIVED**

APR 19 2007

Northern Va. Region  
Dept. of Env. Quality

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO**

**Savvis Communications Corporation  
DEQ Registration No. 73160**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1316.C, 10.1-1307.D and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and Savvis Communications Corporation, for the purpose of resolving certain alleged violations of the SAPCB regulations as specified in SECTION C of this Order.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order.
6. "Savvis Communications Corporation" means the facility located at 45901 and 45845 Nokes Boulevard, Sterling, Virginia 20166.
7. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
9. "VAC" means Virginia Administrative Code.

**SECTION C: Findings of Fact**

1. Savvis Communications Corporation has five diesel engine-powered electrical generators rated at 1250 kilowatts output (located at 45901 Nokes Boulevard); and six diesel engine-powered electrical generators rated at 2000 kilowatts output (located at 45845 Nokes Boulevard), making it subject to State Air Pollution Control Board regulations. A State Operating Permit was issued February 10, 2004, to Cable & Wireless, the former owners of the facility.
2. On June 7, 2006, DEQ Northern Virginia Regional Office (NVRO) received a call on behalf of the Savvis Communications Corporation facility, regarding the availability of the operating hours of the existing emergency generators.
3. On June 8, 2006, DEQ personnel conducted an on site inspection to confirm the operational status of equipment at the facility, at which time it was noted that the facility had brought on site and was operating one Caterpillar 3516BDITA portable generator, rated at 2,628 HP, and one Caterpillar 3512 portable generator, rated at 1,865 HP, which are not included in the State Operating Permit.
4. On June 13, 2006, DEQ Air Compliance and Permitting staff convened a conference call with Savvis Communications Corporation and Ascent Corporation staff, at which time DEQ staff requested a timeline of events, the manufacturer's specifications, and the runtimes of the additional generators, as well as the runtimes for the existing permitted equipment. DEQ Staff also requested that the facility submit a notification of change of ownership.

5. During a 2006 review of DEQ's compliance files, it was noted that the source had not submitted the Calendar Year 2005 Annual Update.
6. On August 21, 2006, after multiple requests, the DEQ received the data requested during the June 13, 2006, conference call, with the exception of a notification of change of ownership. From the data, it was noted that the facility had brought on site and operated the two portable generators from June 1, 2006 through June 19, 2006.
7. Permit Condition 1 of the February 10, 2004, State Operating Permit, states that, "except as specified in this permit, the permitted facility is to be constructed and operated as represented in the permit application dated August 27, 2003, including amendment information dated October 27, 2003; October 31, 2003; November 10, 2003; and January 23, 2004. Any changes in the permit application specifications or any existing facilities which alter the impact of the facility on air quality may require a permit. Failure to obtain such a permit prior to construction may result in enforcement action. (9 VAC 5-50-390 and 9 VAC 5-80-10 K 4)"
8. Permit Condition 19 of the February 10, 2004, State Operating Permit, states that, "in the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the NVRO Regional Air Compliance Manager of the change of ownership within 30 days of the transfer. (9 VAC 5-80-10 O)"
9. 9 VAC 5-20-160 of the regulations requires that, upon request of the board, the facility shall register such source operations with the board and update such registration information. The information required for registration shall be determined by the board and shall be provided in the manner specified by the board. The board has determined that sources shall periodically be required to submit data in order to calculate emissions from its operations. The format for reporting the data is the Annual Update form, which is requested of all Air facilities on a minimum tri-annual basis. The board requested that Savvis Communications Corporation complete and submit Annual Update for Calendar Year 2005.
10. DEQ issued a Notice of Violation (NOV), dated September 13, 2006, addressing Savvis Communications Corporation's operation of two portable generators without first obtaining a permit, failure to provide notification of a transfer of ownership, and failure to respond to the request to submit the Annual Update for Calendar Year 2005. The referenced NOV stated that the facility must respond within ten days to discuss the matter and arrange a meeting.

11. On September 28, 2006, DEQ sent another copy of the Calendar Year 2005 Annual Update to Savvis Communications Corporation, with instructions to complete and submit the form to DEQ within 30 days. To date, no response has been received by the DEQ.
12. On October 13, 2006, DEQ received a notice of change of ownership, which stated that Savvis Communications Corporation took ownership of the Cable & Wireless facility on March 5, 2004.
13. To date, no other response to the NOV has been received from the facility.
14. During a review of the compliance-related enforcement documents and correspondences, it was discovered that the combined operation of the two generators brought on site and the permitted generators at the 45901 Nokes Boulevard facility was 621 hrs within the previous 12 month period.
15. Permit Condition 3 of the February 10, 2004, State Operating Permit, states that, "the five diesel engine-powered electrical generators rated at 1250 kilowatts output (located at 45901 Nokes Boulevard) shall not operate more than 500 engine-hours per year combined, calculated monthly as the sum of each consecutive 12 months. These engine-hour limits apply to all operation, including operation for maintenance and testing. (9 VAC 5-80-10 H)"
16. Permit Condition 10 of the February 10, 2004, State Operating Permit, states that, "Total emissions from the generator units at 45901 and 45845 Nokes Boulevard combined shall not exceed the limits specified below:

Nitrogen Oxides	24.3 tons/yr
(as NO2)	
Carbon Monoxide	3.6 tons/yr

These emission limits are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined from compliance with Conditions 3, 4, 8, and 9. (9 VAC 5-170-160)"

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1316(C), the Board orders Savvis Communications Corporation, and Savvis Communications Corporation agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Savvis Communications Corporation, and Savvis Communications Corporation voluntarily agrees, to pay a civil charge in the amount of Forty Five Thousand Eight Hundred Thirty Nine dollars (\$45,839.00). The civil charge is due within 30 days of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
P.O. Box 1104  
Richmond, Virginia 23218

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Savvis Communications Corporation, for good cause shown by Savvis Communications Corporation, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the Savvis Communications Corporation facility by DEQ on September 13, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Savvis Communications Corporation admits the jurisdictional allegations, factual findings, and conclusions contained herein.
4. Savvis Communications Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Savvis Communications Corporation declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Savvis Communications Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Savvis Communications Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Savvis Communications Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Savvis Communications Corporation shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Savvis Communications Corporation. Notwithstanding the foregoing, Savvis Communications Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Savvis Communications Corporation. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Savvis Communications Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Savvis Communications Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 17<sup>th</sup> April, 2007.

  
Jeffery A. Steers, NVRO Regional Director  
Department of Environmental Quality

Savvis Communications Corporation voluntarily agrees to the issuance of this Order.

By: 

Date: APRIL 4, 2007

STATE WASHINGTON  
~~Commonwealth of Virginia~~

City/County of KING

The foregoing document was signed and acknowledged before me this 4<sup>th</sup> day of  
APRIL, 2007, by JEFFREY D WILE, who is  
(Month) (Name)

V.P. of Op. for the Savvis Communications Corporation facility, on behalf of the  
(Title) facility.

  
Notary Public

My commission expires: 3/12/10





## **APPENDIX A**

As part of the resolution of this Consent order, the Savvis Communications Corporation facility shall perform the following actions:

1. Complete and submit the Annual Update for Calendar Year 2005 by December 27, 2006.
2. Provide a written accounting of the corrective actions it will take to ensure future compliance with the regulations and to appropriately respond to the board's request for information.
3. Submit both copies of this Consent Order, signed and notarized by December 27, 2006.